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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,705

01/23/2006

Mario Weist

2569

60333

7590

04/13/2009

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EXAMINER

LONG, DONNELL ALAN

ART UNIT

PAPER NUMBER

4128

MAIL DATE

DELIVERY MODE

04/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/565,705	Applicant(s) WEIST, MARIO	
	Examiner DONNELL LONG	Art Unit 4128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/13/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 14 is objected to because of the following informalities: the comma at the end of the claim should be replaced with a period ".". Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 11, 14-15, 17, and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Wood (5927549).

It is noted that the embodiment (shown in Figs. 1-7 of Wood) and the embodiment (shown in Figs. 8-14 of Wood) are substantially similar in structure (col. 8, lines 27-49 of Wood).

Regarding claim 11, Wood discloses a drink and pour closure having a pierce-cutting feature for composite packs or necks of containers or bottles closed via an aluminum foil, comprising:

an end connector (24 or 224) having a threaded cap (28) at the bottom thereof for screwing a collar thread thereon, the end connector further including a mouth (66 or 345), and a pierce-cutter (22 or 222, 90, 92, 94) formed on an inner side of the end connector for forming a nipple (90) fitted inside the end connector, the pierce-cutter forming at least one pierce point (94) with a bottom edge of the pierce-cutter forming at

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least one swung cutting edge (92), rising at an angle of a nipple rotation axis with the mouth (fig. 4), forming on an outer side of the end connector, a sleeve (52) surrounding the end connector and that is movable on the end connector.

Regarding claim 14, the drink and pour closure of the Wood reference further comprises a turning and cover cap (20 or 220) in the mouth, connected through an integral hinge (130 or 230), the turning and cover cap having a tothing (88 or 504) on an inner side capable of engaging with a complementary tothing rim (80 or 378) provided around a periphery of the mouth.

Regarding claim 15, the mouth has a dome-shaped head (370) having diametric incisions (372) joined centrally at a pouring-opening (figs. 13 and 14).

Regarding claim 17, the drink and pour closure further comprises a locking device (108, 110), wherein the mouth on the end connector is moveable in an axial direction over the height of the pierce-cutter with the locking device operating between the pierce-cutter and the end connector for locking the pierce-cutter in a pressed-down position (col. 6, lines 36-43).

Regarding claim 19, the drink and pour closure further comprises a strip (26 or 226 of fig. 9) having a plurality of material bridges (50), placed as breaking points and able to be torn off, located at a bottom edge of the sleeve (52), the strip forming at one end a tongue (56) projecting outwardly with the strip preventing a pressing-down movement of the mouth on the end connector (24 or 224) for indicating an initial opening of a container or bottle having the drink the pour closure (col. 6, lines 45-52).

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Regarding claim 20, the drink and pour closure further comprises a cap (20 or 220), acting as a sealing and dust cap, formed via an elastically flexible strip (130 or 230) that is capable of being placed on the mouth (66 or 345), wherein at a bottom side of the cap, there is a collar (60) having a sealing lip (construed as the rim of the collar) that fits the pierce-cutter (22 or 222, 90, 92, 94).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 12-13, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood (as discussed supra) in view of Gross et al. (6477743).

Regarding claim 12, the Woods reference DIFFERS in that it does not disclose that the drink and pour closure comprises a plurality of guiding devices having the limitations as claimed. Attention, however, is directed to the Gross et al. reference, which discloses another drink and pour closure having a pierce cutting feature for composite packs or necks of containers or bottles closed via an aluminum foil, comprising a plurality of guiding devices (150, 170) between the outer side of an end connector (30) and an inner side of a sleeve (120), the plurality of guiding devices engaging with one another (fig. 3-4), so that when a mouth (160), is rotated on the end connector, a helical turning of the mouth is caused relative to the end connector. It, therefore, would have been obvious to one having ordinary skill in the art at the time the

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invention was made to modify the Wood reference by employing the guiding devices in conjunction with other associated elements, in view of the teachings of the Gross et al., in order to provide a drink and pour closure less likely to pop open if dropped because to open it would require a twisting of the cover cap relative to the end connector, which is not likely to occur if the closure were to impact with the ground.

Regarding claim 13, the plurality of guiding devices (referring to the Gross et al. reference) on the outer side of the end connector include steep, helical grooves (150) carried on the outer side of the end connector and, on the accompanying mouth, at least two cams (170) at an inner side of a sleeve (120), the two cams fitting into the helical groove (figs. 3-4).

Regarding claim 16, the modified Wood drink and pour closure further comprises a projection (Wood, 110) at an upper end of the end connector, the pierce-cutter, having at a lower region at its outer side, a continuous running step (Wood, 108) engaging the projection at an end of the end connector (Wood, 24 or 224) from a back portion when the mouth is being placed on (Wood, col. 6, lines 36-43), thereby sealing the mouth in a drip-proof manner on the end connector. Even though the Wood reference does not disclose that the projection projects inwardly and the continuous running step projects outwardly as claimed, the arrangement of the projection and the continuous running step is merely a design preference and does not affect the functioning of the drink and pour closure. It would have been obvious to one of ordinary skill in the art to form the projection and continuous running step at a location that was most suitable for the intended use of the apparatus.

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Regarding claim 18, the pierce-cutter (Wood, 22 or 222, 90, 92, 94) includes an projecting step (108), the end connector (Wood, 24 or 224) includes a projection (110), and the mouth (Wood, 345) includes an outer rim (376) being round in cross-section (fig. 9) and projecting radially beyond (i.e. directed from any point on the sleeve 52 radially toward the outer rim) the sleeve, so that when the mouth is pulled upwardly, the projecting step on the pierce-cutter encounters a stop (construed as the lower surface of the projection) at the projection on the end connector with the pierce point (94) of the pierce-cutter being positioned above the bottom of the end connector (fig. 4). Even though the Wood reference does not disclose that the projection projects inwardly and the step projects outwardly as claimed, the arrangement of the projection and the step is merely a design preference and does not affect the functioning of the drink and pour closure. It would have been obvious to one of ordinary skill in the art to form the projection and continuous running step at a location that was most suitable for the intended use of the apparatus.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DONNELL LONG whose telephone number is (571)270-5610. The examiner can normally be reached on Monday through Friday, 8am to 5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571)272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Khoa D. Huynh/
Supervisory Patent Examiner, Art Unit 4128